

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  QWEST COMMUNICATIONS CORPORATION	DOCKET NO. TCU-03-13
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**ORDER DOCKETING FOR FORMAL PROCEEDING, GRANTING INTERVENTION,  
AND ESTABLISHING PROCEDURAL SCHEDULE**

(Issued June 30, 2004)

On September 16, 2003, the Utilities Board (Board) issued an order approving an application for public convenience and necessity to Qwest Communications Corporation (QCC), subject to the filing of approved tariffs and service area maps. The application was identified as Docket No. TCU-03-13. The approval would allow QCC to offer local exchange service in areas other than the service territory of its affiliate, Qwest Corporation (Qwest).

On April 6, 2004, QCC filed a request to amend its approved application to reflect a change in QCC's requested service area. QCC seeks to change its previously-designated service area to include the entire state of Iowa, rather than only those service areas outside the areas served by Qwest.

In support of its request, QCC states that as it developed its business plans, QCC determined it could not serve potential customers who desire service within one or more of Iowa's largest cities if its service area does not include Qwest's service area. QCC states that it may purchase services from Qwest pursuant to an

interconnection agreement and that it intends to resell Qwest's services along with its own services. QCC also states that its technical, financial, and managerial qualifications that were submitted in its initial application have not changed. Finally, QCC states that as it will be one of many competitive local exchange carriers reselling Qwest's systems, products, and offerings, Qwest's existing retail and wholesale offerings will be unaffected by QCC's entry into Qwest's exchanges.

On April 29, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to QCC's application. In support of its objection, Consumer Advocate identified two issues: First, whether an affiliate of the incumbent local exchange carrier (ILEC) may be granted a certificate of public convenience and necessity to provide local service as a competitive local exchange carrier (CLEC) in the same geographic area as its affiliate ILEC and second, whether it is consistent with the public interest for an affiliate of an ILEC to provide local exchange telecommunications service within the same geographic area as its affiliate ILEC, where both are wholly-owned subsidiaries of the same holding company. Consumer Advocate requests the Board docket QCC's request as a formal proceeding to further investigate the question.

On May 12, 2004, QCC filed a response to Consumer Advocate's objection. In support of its response, QCC asserts that Consumer Advocate did not make an articulated objection and there is no real basis to docket this matter as a formal proceeding.

On May 21, 2004, Consumer Advocate filed a response to QCC's response. Consumer Advocate states that while it did not offer evidence or arguments on the issues in its April 29, 2004, objection, Consumer Advocate identified and gave notice of the issues raised by QCC's request.

On June 4, 2004, QCC filed a reply to Consumer Advocate's May 21, 2004, response. QCC states that Consumer Advocate has not offered any facts or allegations of fact demonstrating that QCC's request is not in the public interest. QCC cites both federal and state laws that require a separation between QCC and its corporate affiliate, Qwest.

On June 11, 2004, the Iowa Association of Municipal Utilities (IAMU) filed a joinder in support of Consumer Advocate's objection to QCC's request. IAMU states that it concurs with Consumer Advocate on all points raised in Consumer Advocate's initial objection and in all subsequent replies. IAMU also requests that the Board deny QCC's request and conclude that competition between affiliates is not effective competition. IAMU also requests that at a minimum, the Board should set the matter for hearing so that proper limitations can be put in place to ensure that effective competition is promoted.

On June 25, 2004, QCC filed a response to IAMU's joinder in Consumer Advocate's objection. In support of its response, QCC states that effective competition will be promoted by approval of its amendment, as its presence in the market will increase competition for other CLECs. QCC also states that it seeks to

increase competition for CLECs that also have interexchange authority and are able to offer their customers "one-stop shopping" for local and inter-LATA services.

Also on June 11, 2004, IAMU filed a motion to intervene in this proceeding. In support of its motion, IAMU states that it regularly advises municipalities on issues involving the provision of telecommunications services and some of its members provide facilities-based local telephone service. In addition, IAMU states that its interests and the interests of its members may be affected by the outcome of this proceeding.

The Board finds that IAMU has demonstrated a unique interest in this proceeding that should be represented. The petition to intervene will be granted.

Iowa Code § 476.29(2) (2003) states that a local exchange carrier

shall not be denied a certificate if the board finds that the applicant possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest. The board shall make a determination within ninety days of the submission by the applicant of evidence of its technical, financial, and managerial ability, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days.

The Board has the authority to determine whether QCC's request to amend its approved application is consistent with the public interest and will therefore docket QCC's request for further proceedings. The Board previously determined in its September 16, 2003, order that QCC's application met the technical, financial, and managerial requirements within the 90-day time frame provided in Iowa Code

§ 476.29(2). The issues raised by Consumer Advocate and supported by IAMU concern the public interest requirement of Iowa Code § 476.29(2). The statute does not require that the public interest requirement be determined within a specific time period. The lack of statutory deadline notwithstanding, the Board will establish an expedited procedural schedule for this docket. In order to expedite the schedule, Board staff has contacted Qwest and determined that July 26, 2004, is the earliest reasonable date for filing Qwest's prepared direct testimony.

**IT IS THEREFORE ORDERED:**

1. The request to amend the approved application filed by Qwest Communications Corporation (QCC) on April 6, 2004, is docketed for formal proceeding as described in this order.
2. The following procedural schedule is established for this proceeding:
  - a. Qwest Communications Corporation shall file prepared direct testimony, with supporting exhibits and workpapers, on or before July 26, 2004.
  - b. Objectors may file prepared rebuttal testimony, with supporting exhibits and workpapers, on or before August 16, 2004.
  - c. Petitioners may file prepared rebuttal testimony, with supporting exhibits and workpapers, on or before August 30, 2004.
  - d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on September 28, 2004,

in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

e. Any party desiring to file a brief may do so on or before October 8, 2004.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of hearing.

6. Pursuant to 199 IAC 7.7(2) and (11), the time for filing responses or objections to data requests and motions will be shortened to five days from the date the motion is filed or the data request is served. All data requests and motions should be served by facsimile transfer or by electronic mail, in addition to United States mail.

7. The petition to intervene filed by Iowa Association of Municipal Utilities on June 11, 2004, is granted.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 30<sup>th</sup> day of June, 2004.